

1 CENTER FOR DISABILITY ACCESS
2 Ray Ballister, Jr., Esq., SBN 111282
3 Russell Handy, Esq., SBN 195058
4 Mary Melton, Esq., SBN 164407
5 Dennis Price, SBN 279082
6 Teresa Allen, SBN 264865
7 Mail: PO Box 262490
8 San Diego, CA 92196-2490
9 Delivery: 9845 Erma Road, Suite 300
10 San Diego, CA 92131
11 (858) 375-7385; (888) 422-5191 fax
12 phylg@potterhandy.com

13 Attorneys for Plaintiffs

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 **Scott Johnson,**

18 Plaintiff,

19 v.

20 **A & M Motor Supply**, a California
21 Corporation; and Does 1-10,

22 Defendants.

23 **Case No.**

24 **Complaint For Damages And
25 Injunctive Relief For Violations
26 Of: American's With Disabilities
27 Act; Unruh Civil Rights Act**

28 Plaintiff Scott Johnson complains of Defendants A & M Motor Supply, a
California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

29
30 **PARTIES:**

31 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
32 level C-5 quadriplegic. He cannot walk and also has significant manual
33 dexterity impairments. He uses a wheelchair for mobility and has a specially
34 equipped van.
35 2. Defendant A & M Motor Supply owned the A & M Motor Supply located
36 at or about 16165 Los Gatos Blvd., Los Gatos, California, in March 2015.

1 3. Defendant A & M Motor Supply owned the A & M Motor Supply located
2 at or about 16165 Los Gatos Blvd., Los Gatos, California, in April 2015.

3 4. Defendant A & M Motor Supply owned the A & M Motor Supply located
4 at or about 16165 Los Gatos Blvd., Los Gatos, California, in May 2015.

5 5. Defendant A & M Motor Supply owned the A & M Motor Supply located
6 at or about 16165 Los Gatos Blvd., Los Gatos, California, in June 2015.

7 6. Defendant A & M Motor Supply owns the A & M Motor Supply ("Store")
8 located at or about 16165 Los Gatos Blvd., Los Gatos, California, currently.

9 7. Plaintiff does not know the true names of Defendants, their business
10 capacities, their ownership connection to the property and business, or their
11 relative responsibilities in causing the access violations herein complained of,
12 and alleges a joint venture and common enterprise by all such Defendants.
13 Plaintiff is informed and believes that each of the Defendants herein,
14 including Does 1 through 10, inclusive, is responsible in some capacity for the
15 events herein alleged, or is a necessary party for obtaining appropriate relief.
16 Plaintiff will seek leave to amend when the true names, capacities,
17 connections, and responsibilities of the Defendants and Does 1 through 10,
18 inclusive, are ascertained.

19

20 JURISDICTION & VENUE:

21 8. The Court has subject matter jurisdiction over the action pursuant to 28
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 9. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California's Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 10. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.
3

4 **FACTUAL ALLEGATIONS:**

5 11. Plaintiff has gone to the Store on a number of occasions during the
6 relevant statutory period, including March 2015, April 2015, May 2015 and
7 June 2015. Plaintiff went there to shop.

8 12. The Store is a facility open to the public, a place of public
9 accommodation, and a business establishment.

10 13. Parking spaces are one of the facilities, privileges, and advantages
11 offered by Defendants to patrons of the Store.

12 14. However, there were no parking spaces marked and reserved for
13 persons with disabilities during any of plaintiff's visits.

14 15. Currently, there is not a single parking space marked and reserved for
15 persons with disabilities.

16 16. Transaction counters are another one of the facilities, privileges, and
17 advantages offered by Defendants to patrons of the Store.

18 17. The transaction counter at the Store was more than 36 inches in height.

19 18. There was no lowered, 36-inch or lower portion of the transaction
20 counter at the Store for use by persons with disabilities during any of plaintiff's
21 visits.

22 19. Currently, the transaction counter at the Store is more than 36 inches in
23 height.

24 20. Currently, there is no lowered, 36-inch or lower portion of the
25 transaction counter at the Store for use by persons with disabilities.

26 21. Path of travel is also one of the facilities, privileges and advantages
27 offered by Defendants to patrons of the Store.

28 22. Unfortunately, the defendants have placed their parking spaces such

1 that there is no path of travel into the entrance when people park in the parking
2 spaces in front of the business.

3 23. Plaintiff personally encountered these barriers.

4 24. These inaccessible conditions denied the plaintiff full and equal access
5 and caused him difficulty and frustration.

6 25. The barriers existed during each of plaintiff's visits in 2015.

7 26. The plaintiff frequents the Los Gatos area and has visited there on scores
8 of occasions in 2015. He purchased items at the Store in May 2015 and
9 encountered the barriers. He visited the Store on three other occasions but was
10 deterred from going inside.

11 27. Plaintiff visited the Store once in March 2015.

12 28. Plaintiff visited the Store once in April 2015.

13 29. Plaintiff visited the Store twice in May 2015.

14 30. Plaintiff visited the Store once in June 2015.

15 31. Plaintiff would like to return and patronize the Store but will be deterred
16 from visiting until the defendants cure the violations.

17 32. The defendants have failed to maintain in working and useable
18 conditions those features required to provide ready access to persons with
19 disabilities.

20 33. The violations identified above are easily removed without much
21 difficulty or expense. They are the types of barriers identified by the
22 Department of Justice as presumably readily achievable to remove and, in fact,
23 these barriers are readily achievable to remove. Moreover, there are numerous
24 alternative accommodations that could be made to provide a greater level of
25 access if complete removal were not achievable.

26 34. The violations identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 35. For example, there are numerous paint/stripe companies that will come
5 and stripe a parking stall and access aisle and install proper signage on rapid
6 notice, with very modest expense, sometimes as low as \$300 in fully
7 compliance with federal and state access standards.

8 36. Additionally, one of the common barrier removal projects is to modify
9 transaction counters so that there is an accessible portion of counter. This is a
10 simple architectural and construction task, well within the capabilities of any
11 general contractor, and done with a modicum of expense and effort.

12 37. Plaintiff is and has been deterred from returning and patronizing the
13 Store because of his knowledge of the illegal barriers that exist. Plaintiff will,
14 nonetheless, return to the business to assess ongoing compliance with the
15 ADA and will return to patronize the Store as a customer once the barriers are
16 removed.

17 38. Given the obvious and blatant violation, the plaintiff alleges, on
18 information and belief, that there are other violations and barriers on the site
19 that relate to his disability. Plaintiff will amend the Complaint to provide
20 proper notice regarding the scope of this lawsuit once he conducts a site
21 inspection. However, please be on notice that the plaintiff seeks to have all
22 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
23 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
24 he can sue to have all barriers that relate to her disability removed regardless
25 of whether he personally encountered them).

26 39. Additionally, on information and belief, the plaintiff alleges that the
27 failure to remove these barriers was intentional because: (1) these particular
28 barriers are intuitive and obvious; (2) the defendants exercised control and

1 dominion over the conditions at this location and, therefore, the lack of
2 accessible facilities was not an “accident” because, had the defendants
3 intended any other configuration, they had the means and ability to make the
4 change.

5

6 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
7 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
8 Defendants.) (42 U.S.C. section 12101, et seq.)

9 40. Plaintiff re-pleads and incorporates by reference, as if fully set forth
10 again herein, the allegations contained in all prior paragraphs of this
11 complaint.

12 41. Under the ADA, it is an act of discrimination to fail to ensure that the
13 privileges, advantages, accommodations, facilities, goods and services of any
14 place of public accommodation is offered on a full and equal basis by anyone
15 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
16 § 12182(a). Discrimination is defined, *inter alia*, as follows:

17 a. A failure to make reasonable modifications in policies, practices,
18 or procedures, when such modifications are necessary to afford
19 goods, services, facilities, privileges, advantages, or
20 accommodations to individuals with disabilities, unless the
21 accommodation would work a fundamental alteration of those
22 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

23 b. A failure to remove architectural barriers where such removal is
24 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
25 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
26 Appendix “D.”

27 c. A failure to make alterations in such a manner that, to the
28 maximum extent feasible, the altered portions of the facility are

1 readily accessible to and usable by individuals with disabilities,
2 including individuals who use wheelchairs or to ensure that, to the
3 maximum extent feasible, the path of travel to the altered area and
4 the bathrooms, telephones, and drinking fountains serving the
5 altered area, are readily accessible to and usable by individuals
6 with disabilities. 42 U.S.C. § 12183(a)(2).

7 42. Any business that provides parking spaces must provide a sufficient
8 number of handicap parking spaces. 1991 Standards § 4.1.2(5). 2010
9 Standards § 208. The required minimum number of handicap parking spaces
10 is dependent on the total number of parking spaces available. *Id.* According to
11 the 1991 Standards, if a parking lot has 1-25 spaces, it must have at least 1
12 accessible parking space. 1991 Standards § 4.1.2(5)(a). And 1 in every 8 of
13 those accessible parking spaces, but not less than 1, must be a “van” accessible
14 parking space, *i.e.*, having an eight foot access aisle. 1991 Standards §
15 4.1.2(5)(b). Under the 2010 Standards, a parking lot with 1-25 spaces must
16 have at least 1 accessible space and 1 of them must be van accessible. 2010
17 Standards § 208.2 & § 208.2.4.

18 43. Here, the failure to provide accessible parking spaces is a violation of the
19 ADA.

20 44. In areas used for transactions where counters have cash registers and
21 are provided for sales or distribution of goods or services to the public, at least
22 one of each type shall have a portion of the counter which is at least 36 inches
23 in length with a maximum height of 36 inches above the floor. 1991 Standards
24 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service
25 counter is a parallel approach, such as in this case, there must be a portion of
26 the sales counter that is no higher than 36 inches above the floor and 36 inches
27 in width and must extend the same depth as the rest of the sales or service
28 counter top. 2010 Standards § 904.4 & 904.4.1.

1 45. Here, no such accessible transaction counter or a lowered, 36 inch
 2 counter has been provided in violation of the ADA.

3 46. Under the ADA, there must be an accessible route within the boundary
 4 of the site from the accessible parking to the accessible building entrance they
 5 serve. 1991 Standards § 4.3.2(1); 2010 Standards § 206.2. The accessible
 6 route shall, to the maximum extent feasible, coincide with the route for the
 7 general public. Id. The accessible route must be at least 36 inches in width
 8 except at doors. 1991 Standards § 4.3.3; 2010 Standards § 403.5.1.

9 47. Here, the failure to provide an accessible path of travel from the parking
 10 lot to the entrance is a violation of the law.

11 48. A public accommodation must maintain in operable working condition
 12 those features of its facilities and equipment that are required to be readily
 13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14 49. Here, the failure to ensure that the accessible facilities were available
 15 and ready to be used by the plaintiff is a violation of the law.

16 50. Given its location and options, plaintiff will continue to desire to
 17 patronize the Store but he has been and will continue to be discriminated
 18 against due to the lack of accessible facilities and, therefore, seeks injunctive
 19 relief to remove the barriers.

20

**21 II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
 22 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 23 Code § 51-53.)**

24 51. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 25 again herein, the allegations contained in all prior paragraphs of this
 26 complaint.

27 52. Because the defendants violated the plaintiff's rights under the ADA,
 28 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.

1 Civ. Code § 51(f), 52(a).)

2 53. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
3 discomfort or embarrassment for the plaintiff, the defendants are also each
4 responsible for statutory damages, i.e., a civil penalty. (Cal. Civ. Code §
5 55.56(a)-(c).)

6 54. Although the plaintiff was markedly frustrated by facing discriminatory
7 barriers and this frustration possibly qualifies as an emotional distress injury,
8 even manifesting itself with minor and fleeting physical symptoms, the
9 plaintiff does not value this very modest frustration and physical personal
10 injury greater than the amount of the statutory damages.

11

12 **PRAYER:**

13 Wherefore, Plaintiff prays that this Court award damages and provide
14 relief as follows:

15 1. For injunctive relief, compelling Defendants to comply with the
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
17 plaintiff is not invoking section 55 of the California Civil Code and is not
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. Damages under the Unruh Civil Rights Act, which provides for actual
20 damages and a statutory minimum of \$4,000.

21 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
22 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

23

24 Dated: February 21, 2017

CENTER FOR DISABILITY ACCESS

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By: _____
27 Russell Handy, Esq.
Attorneys for plaintiff